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11 WELLS FARGO BANK, N.A.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LINDSAY SANTINI, on behalf of
herself and others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, a National
Association with its principal place of
business in the State of California,

Defendants.

} Case No.: 16-cv-01992-YGR

CLASS ACTION

}
DEFENDANT WELLS FARGO BANK,
N.A.'S OPPOSITION TO NOTICE OF
PENDENCY OF OTHER ACTION OR
PROCEEDING [LOCAL RULE 3-13(c)]

1 Plaintiffs filed a Notice of Pendency of Other Action or Proceeding Pursuant to
2 Local Rule 3-13 (hereinafter, “the Notice”) on June 24, 2016. While the instant case and
3 the cases identified by Plaintiff in the Notice involve the same defendant and allege wage
4 and hour claims, that is where the similarities end. Pursuant to Local Rule 3-13(c),
5 Defendant Wells Fargo Bank, N.A. (hereinafter, “Wells Fargo”) opposes Plaintiff’s
6 Notice as follows:

7 **I. INTRODUCTION**

8 Local Rule 3-13 provides that a Notice of Pendency of Other Action or Proceeding
9 must be promptly filed when an action in this Court: (1) involves all or a material part of
10 the same subject matter; **and** (2) all or substantially all of the same parties as another
11 action pending in any other federal or state court. In Plaintiff’s Notice, Plaintiff identifies
12 two state court cases that Plaintiff states “*may* involve a material part of the same subject
13 matter and substantially all of the same parties as this action.” (emphasis added).
14 Furthermore, Plaintiff seeks “that this Court entertain periodic updates” on those cases
15 “or otherwise, as the Court orders.” This relief is not authorized by the Rule and Plaintiff
16 does not seek any other relief, including that proceedings in the instant case be
17 coordinated with proceedings in the other identified cases. *See Local Rule 3-13(b)(3)(C)*
18 (“A Notice of Pendency of Other Action or Proceeding must contain... A brief statement
19 of: ... If the other action is pending before any state court, whether proceedings should be
20 coordinated to avoid conflicts, conserve resources, and promote an efficient
21 determination of the action.”).

22 For reasons outlined herein, the cases identified by Plaintiff in the Notice do not
23 involve “all or a material part of the same subject matter” or “all or substantially all of the
24 same parties” as the instant action and, therefore, no relief is justified under Local Rule 3-
25 13. Accordingly, there is no reason to coordinate any proceedings in these cases,
26 including requiring periodic updates.

27 First, Plaintiff has conceded that the cases do not meet the requirements under
28 Local Rule 3-13. Plaintiff knew about one of the two cases identified in the Notice –

1 *Wells Fargo Wage and Hour Cases*, JCCP 4821 – back in April 2016 when this case was
2 filed because the same counsel represents Plaintiff Santini in the instant case and three of
3 the named plaintiffs in JCCP 4821. Yet, Plaintiff did not file a Notice of Pendency of
4 Other Action at that time in the instant case identifying JCCP 4821 (Local Rule 3-13
5 requires the notice to be filed “promptly”), nor did Plaintiff’s counsel at that time file a
6 Notice of Related Case in JCCP 4821, identifying the instant case as related to that case.
7 The only explanation is that they did not believe the cases to meet the requirements of
8 Local Rule 3-13 because they involve individuals holding different positions at Wells
9 Fargo. As Plaintiff admits in the Notice, “the cases differ in that they seek to represent
10 different non-exempt job positions.” For the same reason, and as will be discussed
11 further herein, the other case identified by Plaintiff in the Notice also does not meet the
12 Rule 3-13 requirements.

13 Second, the cases do not “involve[] all or substantially all of the same parties.”
14 There is not a certified class in any of these cases. In *Wells Fargo Bank Wage and Hour*
15 *Cases*, JCCP 4702, class certification was denied in January 2014¹ and, in JCCP 4821
16 and the instant case, there has been no ruling on any motion for class certification.
17 Accordingly, the only plaintiffs are the named plaintiffs, none of whom are plaintiffs in
18 more than one case. In addition, as Plaintiff admits in the Notice, the class definitions are
19 not overlapping with the instant case. Each case alleges a putative class that contains
20 individuals holding different job positions with different duties and expectations.

21 Third, because the class definitions are not overlapping, the cases do not
22 “involve[] all or a material part of the same subject matter.”

23 Finally, the only relief requested by Plaintiff is that the Court “entertain periodic
24 updates” on the other proceedings. It is not clear from the Notice what that means or why
25 it would be necessary “to avoid conflicts, conserve resources and promote an efficient
26 determination of the action.” Local Rule 3-13(b)(3)(C).

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28 ¹ The Court in JCCP 4702 certified a rest period subclass but the parties later stipulated to decertify the class and the rest period class allegations were dismissed.

1 For all of these reasons, these cases do not meet the requirements set forth by
2 Local Rule 3-13.

3 **II. THE CASES IDENTIFIED BY PLAINTIFF DO NOT MEET THE**
4 **REQUIREMENTS OF LOCAL RULE 3-13**

5 **A. Plaintiff Concedes that These Cases Do Not Meet the Requirements Of**
6 **Local Rule 3-13.**

7 As an initial matter, Plaintiff has conceded that these cases do not meet the
8 requirements of Local Rule 3-13. Under Local Rule 3-13, “[w]henever a party knows or
9 learns that an action filed or removed to this district involves all or a material part of the
10 same subject matter and all or substantially all of the same parties as another action
11 which is pending in any other federal or state court, the party must *promptly* file with the
12 Court in the action pending before this Court ... a Notice of Pendency of Other Action or
13 Proceeding.” (emphasis added).

14 On April 15, 2016, the Markham Law Firm filed the instant case on behalf of
15 plaintiff Santini. Markham Law Firm is also counsel for one of the groups of plaintiffs in
16 JCCP 4821, one of the cases identified by Plaintiff in the Notice. At that time, the
17 Markham Law Firm did **not** file a Notice of Pendency of Other Action or Proceeding
18 under Local Rule 3-13 identifying JCCP 4821. In fact, Plaintiff filed a Civil Cover Sheet
19 indicating the absence of any related cases. *See Santini* Docket No. 1-1. In addition, the
20 *Ramirez* plaintiffs (in JCCP 4821) did not file within 15 days, as is required by California
21 Rule of Court 3.300(e), a Notice of Related Case in JCCP 4821 identifying *Santini* as a
22 related case. No one knew sooner than the Markham Law Firm of the two lawsuits (since
23 they filed them) and no one knows the allegations better (as they framed the complaints),
24 yet they did not make any such filing at that time in either case.

25 Furthermore, the other case identified by Plaintiff in the Notice is JCCP 4702. At
26 one time, JCCP 4702 was a putative class action brought on behalf of non-exempt Tellers
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1 in California.² This is significant because the Markham Law Firm also filed a second
2 action against Wells Fargo on April 15, 2016, the same day they filed the instant case –
3 the *Layog* action. The *Layog* case is a putative class action alleging wage and hour
4 claims on behalf of a putative class of non-exempt Tellers in California. At the time the
5 Markham Law Firm filed *Layog* (on behalf of Tellers) and *Santini* (on behalf of Phone
6 Bankers), Plaintiff did not identify *Layog* (Tellers) as being related to *Santini* (Phone
7 Bankers), or vice versa. See *Santini* Docket No. 1-1; *Layog* Docket No. 1-1. Knowing
8 all of the allegations (because they framed them) and knowing all of the parties, Plaintiff
9 did not believe *Layog* (on behalf of Tellers) to be related to *Santini* (on behalf of Phone
10 Bankers). Accordingly, if *Layog*, a Teller class action, is not related to *Santini*, then
11 JCCP 4702, a Teller representative action, necessarily does not meet the requirements of
12 Local Rule 3-13.

13 In other words, Plaintiff has conceded that the two cases identified in the Notice
14 do not meet the requirements of Local Rule 3-13. While one can only speculate as to
15 Plaintiff's counsel's motive for making this filing now, it is not because these cases meet
16 those requirements.

17 **B. These Cases Do Not Involve All or Substantially All of the Same Parties.**

18 As an initial matter, given that no class has been certified in any of these cases
19 (and class certification has been denied in one of the cases), the only parties are the
20 individual named plaintiffs themselves and there is no overlap of named plaintiffs. Thus,
21 the only party consistent among the cases is Wells Fargo.

22 Furthermore, Plaintiff admits that even the class definitions are not overlapping, as
23 they all contain individuals holding different job positions with different duties and
24 expectations: to quote Plaintiff from the Notice, “the cases differ in that they seek to
25 represent different non-exempt positions.”

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28 ² As indicated in the Notice, because class certification has been denied, the only remaining claim in JCCP 4702 is a PAGA representative action purportedly brought on behalf of non-exempt Tellers in California.

1 The instant case seeks to represent a putative class of Phone Bankers. Phone
2 Bankers are not located in a retail store location (what many people think of as a “bank
3 branch”) but rather answer customer calls that come in to a call center, and, among
4 myriad other differences, report to different supervisors, and use a different scheduling
5 program than employees in the retail store locations. Phone Bankers never interact face-
6 to-face with a customer or prospective customer.

7 The first case identified by Plaintiff in the Notice – JCCP 4821 -- asserts wage and
8 hour claims on behalf of a putative class who hold (or have held) the positions of
9 Customer Sales and Service Representative, Personal Banker, Premier Banker, and
10 Business Banking Specialist. These are referred to as the “platform” employees. These
11 Team Members, unlike Phone Bankers, do work out of a retail store location and meet
12 with customers and prospective customers to discuss various banking products and
13 opportunities, for example, a checking account or a credit card. They may meet with
14 these customers or prospective customers in the retail store location or at an appointment
15 outside the retail store location. When they are in the retail store location, they sit at
16 desks that are in the store (rather than at Teller “windows”).

17 The second case identified by Plaintiff in the Notice – JCCP 4702 – *sought* to
18 represent a putative class of individuals who held the Teller or Lead Teller position at
19 Wells Fargo.³ These Team Members are the individuals who help customers with
20 banking transactions at the Teller “windows” such as a deposit or withdrawal transaction.

21 Again, Plaintiff has *conceded* that these cases do not involve the same parties by
22 not filing a Notice of Pendency of Other Action or Proceeding at the outset of this case
23 identifying JCCP 4821 and by not identifying *Layog*, which is virtually identical to the
24 original JCCP 4702, as related to *Santini* or vice versa.

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28 ³ As indicated above, class certification was denied in January 2014, so there is no
putative class in that case.

1 **C. These Cases Do Not Involve All or a Material Part of the Same Subject**
2 **Matter.**

3 For the same reasons, these cases do not involve all or a material part of the same
4 subject matter. It is Wells Fargo's contention that there are no common issues of law or
5 fact in any of these cases because Wells Fargo has lawful policies and each Team
6 Member's situation will differ based on, for example, where they work, who they report
7 to, their own personal experiences and perception, etc. These differences are even more
8 pronounced when the individuals hold entirely different positions with different duties
9 and expectations, as described above. For example, the experiences of a Teller, who
10 works at a Teller "window" during most of his or her day, are going to be different than
11 the experiences of a Personal Banker, who meets with customers or prospective
12 customers throughout the day both in and out of the retail store location. Furthermore,
13 those experiences will be different than the experiences of a Phone Banker who never
14 interacts face to face with a customer.

15 The workflow is entirely different. The Phone Bankers sit in a "call center" where
16 calls are consistently routed to the next available Phone Banker. The calls come in on a
17 consistent, rolling basis and Phone Bankers spend the vast majority of their time on the
18 phone. The workflow of Tellers, on the other hand, is based on customer traffic, which
19 could be busy at certain times of the day and not at others, and those busy times will vary
20 based on many factors, including the location of the store, size of the store, type of
21 customer, etc. The workflow of "platform" Team Members can be largely driven by the
22 platform Team Member himself or herself. The Team Member could set appointments
23 inside or outside the store location with customers or potential customers, or could decide
24 to make telephone calls that day to potential customers, or could decide to spend the day
25 at the store location assisting any customers who may walk in to the store location and
26 need assistance, or any combination of these and other activities. Because of these
27 differences, these cases do not involve the "same subject matter."

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1 Furthermore, the only remaining claim in JCCP 4702 is a PAGA claim and there
2 is no PAGA claim in the instant case. Therefore, there are no overlapping legal issues
3 between the two cases.

4 **D. It is Not Clear What Purpose Would be Served by “Periodic Updates”.**

5 In a conclusory manner, Plaintiff states in the Notice that “[t]o best conserve
6 resources and promote the efficient determination of the action..., Plaintiff respectfully
7 proffers that this Court entertain periodic updates on [JCCP 4821 and JCCP 4702], or
8 otherwise, as the Court orders.” As an initial matter, this is not relief authorized by Rule
9 3-13. Furthermore, given that the cases involve different populations, the legal issues are
10 no more overlapping than they are in any two cases alleging wage and hour claims.
11 Plaintiff’s reasoning would require “periodic updates” in all cases alleging wage and hour
12 claims against Wells Fargo. If anything, that does not conserve resources but rather
13 utilizes them for no clear purpose.

14 Furthermore, the cases are at very different procedural postures. The instant case
15 was filed approximately three months ago and there has not even been a Case
16 Management Conference. On the other hand, JCCP 4821 has been pending for more than
17 six years with no motion for class certification, while, in JCCP 4702, class certification
18 has already been heard and denied and the only remaining claim is a PAGA claim, a
19 claim which is not part of the instant case.

20 In sum, Plaintiff provides no argument why “periodic updates” would be useful or
21 create any efficiencies and, in fact, no argument why any coordination would serve the
22 purposes outlined in Local Rule 3-13.

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1 **III. CONCLUSION**

2 For the foregoing reasons, these cases do not meet the requirements of Local Rule
3 3-13 and, accordingly, no relief should be granted under the Rule.

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6 DATED: July 8, 2016

KADING BRIGGS LLP

7 By /s/ Theresa A. Kading

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9 Attorneys for Defendant
Wells Fargo Bank, N.A.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18, and not a party to the within action. My business address is Kading Briggs LLP, 100 Spectrum Center Drive, Suite 800, Irvine, CA 92618; and that on this date true and correct copies of the following documents:

**DEFENDANT WELLS FARGO BANK, N.A.'S OPPOSITION TO NOTICE
OF PENDENCY OF OTHER ACTION OR PROCEEDING [LOCAL RULE
3-13(c)]**

was served on the following interested parties by enclosing the same in a sealed envelope with first-class postage fully prepaid and deposited the sealed envelope with the United States Postal Services, as follows:

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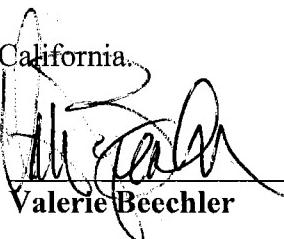
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14 JCCP 4702 (Los Angeles Superior Court)

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on **July 8, 2016**, at Irvine, California.



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29 Valerie Beechler